

SYVERSON, LESOWITZ & GEBELIN LLP
 Erik S. Syverson (Bar No. 221933)
 erik@syversonlaw.com
 Steven T. Gebelin (Bar No. 261507)
 steven@syversonlaw.com
 2029 Century Park East, Suite 2910
 Los Angeles, California 90067
 Telephone: (310) 341-3072
 Facsimile: (310) 341-3070

COHEN TAUBER SPIEVACK & WAGNER P.C.
 Kenneth J. Rubinstein (admitted pro hac vice)
 krubinstein@ctswlaw.com
 Jackson S. Davis (admitted pro hac vice)
 jdavis@ctswlaw.com
 420 Lexington Avenue, Suite 2400
 New York, New York 10170
 Telephone: (212) 381-8745
 Facsimile: (212) 586-5095

Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

PENTHOUSE GLOBAL MEDIA,
 INC., a Delaware corporation,
 GENERAL MEDIA
 COMMUNICATIONS, INC., a New
 York corporation,

Plaintiffs,

v.

GUCCIONE COLLECTION, LLC, a
 Delaware limited liability company,
 JEREMY FROMMER, an individual,
 RICK SCHWARTZ, an individual,
 JERRICK MEDIA HOLDINGS, INC.,
 a Nevada corporation, JERRICK
 VENTURES, INC., a Nevada
 corporation, JERRICK VENTURES
 LLC,

Defendants.

Case No.: 2:17-CV-04980-PA (FFMx)
**DEFENDANTS' ANSWER TO THE
 SECOND AMENDED COMPLAINT**

1 Defendants Guccione Collection, LLC, Jeremy Frommer, Rick Schwartz,
2 Jerrick Media Holdings, Inc., Jerrick Ventures, Inc., and Jerrick Ventures LLC
3 (collectively, “Defendants,” unless otherwise noted), by and through their counsel,
4 Syverson, Lesowitz, and Gebelin LLP, and Cohen Tauber Spievack and Wagner
5 P.C., for their Answer to the Second Amended Complaint (the “Complaint”) state as
6 follows:
7

8 1. Defendants deny knowledge or information sufficient to form a belief
9 as to the truth of the allegations contained in paragraph 1 of the Complaint.

10 2. Defendants deny knowledge or information sufficient to form a belief
11 as to the truth of the allegations contained in paragraph 2 of the Complaint.

12 3. Defendants deny the allegations contained in paragraph 3 of the
13 Complaint.

14 4. Defendants admit that Frommer is a United States citizen residing in
15 New Jersey, and admit that Frommer is the Chief Executive Officer of Jerrick Media
16 Holdings, Inc. and a member of Jerrick Ventures, LLC. Defendants deny the
17 remainder of the allegations contained in paragraph 4 of the Complaint.

18 5. Defendants admit the allegations contained in paragraph 5 of the
19 Complaint.

20 6. Defendants admit the allegations contained in paragraph 6 of the
21 Complaint.

22 7. Defendants deny the allegations contained in paragraph 7 of the
23 Complaint.

24 8. Defendants admit the allegations contained in paragraph 8 of the
25 Complaint.

26 9. Defendants deny knowledge or information sufficient to form a belief
27 as to the truth of the allegations contained in paragraph 9 of the Complaint.
28

1 10. Defendants deny the allegations contained in paragraph 10 of the
2 Complaint.

3 11. As paragraph 11 of the Complaint merely states legal conclusions, no
4 response is necessary.

5 12. To the extent paragraph 12 of the Complaint states legal conclusions,
6 no response is necessary. Defendants otherwise deny the allegations of wrongdoing
7 alleged in paragraph 12.

8 13. Defendants deny knowledge or information sufficient to form a belief
9 as to the truth of the allegations contained in paragraph 13 of the Complaint except
10 admit that, upon information and belief, Guccione was the founder of Penthouse
11 magazine and the Penthouse brand who died in 2010.

12 14. Defendants deny knowledge or information sufficient to form a belief
13 as to the truth of the allegations contained in paragraph 14 of the Complaint and
14 refer to the USPTO with respect to any filings purportedly made.

15 15. Defendants admit that Frommer purchased a storage facility in
16 Englewood, New Jersey at auction, which included items formerly belonging to
17 Guccione, and otherwise deny the characterizations and allegations contained in
18 paragraph 15 of the Complaint.

19 16. Defendants admit the allegations contained in paragraph 16 of the
20 Complaint.

21 17. Defendants refer to the referenced letter for the contents thereof and
22 otherwise deny any allegations of wrongdoing alleged in paragraph 17 of the
23 Complaint.

24 18. Defendants deny knowledge or information sufficient to form a belief
25 as to the truth of the allegations contained in paragraph 18 of the Complaint.

26 19. Defendants refer to the referenced documents for the contents thereof
27 and admit that the claims were dismissed pursuant to a settlement agreement entered
28

1 into by the parties to that proceeding and refer to the settlement agreement for the
2 terms thereof.

3 20. Defendants deny knowledge or information sufficient to form a belief
4 as to the truth of the allegations contained in paragraph 20 of the Complaint, except
5 deny that Plaintiffs are the rightful owners of any of the noted trademarks.

6 21. Defendants deny the allegations contained in paragraph 21 of the
7 Complaint.

8 22. Defendants deny the allegations contained in paragraph 22 of the
9 Complaint.

10 23. Defendants deny knowledge or information sufficient to form a belief
11 as to the truth of the allegations contained in paragraph 23 of the Complaint, except
12 admit that, upon information and belief, Guccione was one of the founders of
13 OMNI, and state that, to the extent paragraph 23 states legal conclusions, no
14 response is necessary.

15 24. Defendants deny knowledge or information sufficient to form a belief
16 as to the truth of the allegations contained in paragraph 24 of the Complaint and
17 state that, to the extent paragraph 24 states legal conclusions, no response is
18 necessary.

19 25. Defendants deny knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained in paragraph 25 of the Complaint.

21 26. Defendants deny knowledge or information sufficient to form a belief
22 as to the truth of the allegations contained in paragraph 26 of the Complaint, except
23 deny that Plaintiffs are the rightful owners of the noted trademarks or the goodwill
24 associated with such marks.

25 27. Defendants deny the allegations contained in paragraph 27 of the
26 Complaint.

1 28. Defendants refer to the referenced filings for the contents therein and
2 admit that a proceeding was commenced before TTAB in which proceeding, among
3 other things, Defendants seek to cancel the OMNI Mark.

4 29. Defendants deny the allegations contained in paragraph 29 of the
5 Complaint.

6 30. Defendants deny the allegations contained in paragraph 30 of the
7 Complaint and refer to the referenced documents for the contents thereof.

8 31. Defendants refer to the referenced sites for the contents therein and
9 otherwise deny the allegations contained in paragraph 31 of the Complaint.

10 32. Defendants deny knowledge or information sufficient to form a belief
11 as to the truth of the allegations contained in paragraph 32 of the Complaint, except
12 deny any allegations of wrongdoing.

13 33. As paragraph 33 of the Complaint merely repeats prior allegations, no
14 response is necessary.

15 34. Paragraph 34 of the Complaint states a legal conclusion as to which no
16 response is necessary; to the extent a response is necessary, Defendants deny that
17 Plaintiffs are the rightful owner of any of the referenced copyrights.

18 35. Defendants refer to the referenced complaint for the contents thereof,
19 and otherwise deny the allegations contained in paragraph 35 of the Complaint.

20 36. Defendants admit that they provided access to the *Caligula* film on
21 Vimeo.com and otherwise deny the allegations contained in paragraph 36 of the
22 Complaint.

23 37. Paragraph 37 of the Complaint states a legal conclusion as to which no
24 response is necessary and Defendants otherwise deny the allegations contained in
25 paragraph 37 of the Complaint.

26 38. Defendants deny the allegations contained in paragraph 38 of the
27 Complaint.
28

1 39. Defendants deny the allegations contained in paragraph 39 of the
2 Complaint.

3 40. Defendants deny the allegations contained in paragraph 40 of the
4 Complaint.

5 41. Defendants deny the allegations contained in paragraph 41 of the
6 Complaint.

7 42. Defendants deny the allegations contained in paragraph 42 of the
8 Complaint.

9 43. Defendants deny the allegations contained in paragraph 43 of the
10 Complaint.

11 44. As paragraph 44 of the Complaint merely repeats prior allegations, no
12 response is necessary.

13 45. Paragraph 45 of the Complaint states a legal conclusion as to which no
14 response is necessary; to the extent a response is necessary, Defendants deny the
15 allegations contained in paragraph 45 of the Complaint.

16 46. Paragraph 46 of the Complaint states a legal conclusion as to which no
17 response is necessary; to the extent a response is necessary, Defendants deny the
18 allegations contained in paragraph 46 of the Complaint.

19 47. Defendants deny the allegations contained in paragraph 47 of the
20 Complaint.

21 48. Defendants deny the allegations contained in paragraph 48 of the
22 Complaint.

23 49. Defendants deny the allegations contained in paragraph 49 of the
24 Complaint.

25 50. Defendants deny the allegations contained in paragraph 50 of the
26 Complaint.

27
28

1 51. Paragraph 46 of the Complaint states legal conclusions as to which no
2 response is necessary; to the extent a response is necessary, Defendants deny the
3 allegations contained in paragraph 51 of the Complaint.

4 52. Defendants deny the allegations contained in paragraph 52 of the
5 Complaint.

6 53. Defendants deny the allegations contained in paragraph 53 of the
7 Complaint.

8 54. Defendants deny the allegations contained in paragraph 54 of the
9 Complaint.

10 55. As paragraph 55 of the Complaint merely repeats prior allegations, no
11 response is necessary.

12 56. Defendants deny the allegations contained in paragraph 56 of the
13 Complaint.

14 57. Defendants deny the allegations contained in paragraph 57 of the
15 Complaint.

16 58. Defendants deny the allegations contained in paragraph 58 of the
17 Complaint.

18 59. Defendants deny the allegations contained in paragraph 59 of the
19 Complaint.

20 60. As paragraph 60 of the Complaint merely repeats prior allegations, no
21 response is necessary.

22 61. Defendants deny knowledge or information sufficient to form a belief
23 as to the truth of the allegations contained in paragraph 61 of the Complaint.

24 62. Defendants deny the allegations contained in paragraph 62 of the
25 Complaint.

26 63. Defendants deny the allegations contained in paragraph 63 of the
27 Complaint.
28

1 64. Defendants deny the allegations contained in paragraph 64 of the
2 Complaint.

3 65. Defendants deny the allegations contained in paragraph 65 of the
4 Complaint.

5 66. Defendants deny the allegations contained in paragraph 66 of the
6 Complaint.

7 67. As paragraph 67 of the Complaint merely repeats prior allegations, no
8 response is necessary.

9 68. Defendants deny the allegations contained in paragraph 68 of the
10 Complaint.

11 69. Defendants deny the allegations contained in paragraph 69 of the
12 Complaint.

13 70. Defendants deny the allegations contained in paragraph 70 of the
14 Complaint.

15 71. Defendants deny the allegations contained in paragraph 71 of the
16 Complaint.

17 72. Defendants deny the allegations contained in paragraph 72 of the
18 Complaint.

19 73. Defendants deny the allegations contained in paragraph 73 of the
20 Complaint.

21 74. Defendants deny the allegations contained in paragraph 74 of the
22 Complaint.

23 75. Defendants deny the allegations contained in paragraph 75 of the
24 Complaint.

25 76. As paragraph 76 of the Complaint merely repeats prior allegations, no
26 response is necessary.

27 77. Defendants deny the allegations contained in paragraph 77 of the
28 Complaint.

1 78. Defendants deny the allegations contained in paragraph 78 of the
2 Complaint.

3 79. Defendants deny the allegations contained in paragraph 79 of the
4 Complaint.

5 80. Defendants deny the allegations contained in paragraph 80 of the
6 Complaint.

7 81. Defendants deny the allegations contained in paragraph 81 of the
8 Complaint.

9 82. As paragraph 82 of the Complaint merely repeats prior allegations, no
10 response is necessary.

11 83. Defendants deny the allegations contained in paragraph 83 of the
12 Complaint.

13 84. Defendants deny the allegations contained in paragraph 84 of the
14 Complaint.

15 85. As paragraph 85 of the Complaint merely repeats prior allegations, no
16 response is necessary.

17 86. Defendants deny knowledge or information sufficient to form a belief
18 as to the truth of the allegations contained in paragraph 86 of the Complaint.

19 87. Defendants deny the allegations contained in paragraph 87 of the
20 Complaint.

21 88. Defendants deny the allegations contained in paragraph 88 of the
22 Complaint.

23 89. Defendants deny the allegations contained in paragraph 89 of the
24 Complaint.

25 90. Defendants deny the allegations contained in paragraph 90 of the
26 Complaint.

27 91. As paragraph 91 of the Complaint merely repeats prior allegations, no
28 response is necessary.

1 92. As paragraph 92 merely states a conclusion of law, no response is
2 necessary.

3 93. Defendants admit that there is an actual controversy regarding the
4 parties' rights with respect to the OMNI Marks.

5 94. Defendants refer to the referenced filings for the contents therein and
6 otherwise deny the allegations contained in paragraph 94 of the Complaint.

7 95. Defendants refer to the referenced filing for the statements therein.

8 96. Defendants refer to the referenced filing for the statements therein.

9 97. Defendants deny knowledge or information sufficient to form a belief
10 as to the truth of the allegations contained in paragraph 97 of the Complaint.

11 98. As paragraph 98 of the Complaint merely repeats prior allegations, no
12 response is necessary.

13 99. Defendants deny the allegations contained in paragraph 99 of the
14 Complaint.

15 100. Defendants deny the allegations contained in paragraph 100 of the
16 Complaint.

17 101. Defendants deny the allegations contained in paragraph 101 of the
18 Complaint.

19 102. Defendants deny the allegations contained in paragraph 102 of the
20 Complaint.

21 103. Defendants deny the allegations contained in paragraph 103 of the
22 Complaint.

23 104. As paragraph 104 of the Complaint merely repeats prior allegations, no
24 response is necessary.

25 105. Defendants deny the allegations contained in paragraph 105 of the
26 Complaint.

27 106. Defendants deny the allegations contained in paragraph 106 of the
28 Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of equitable estoppel.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or part, by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to comply with the dispute resolution procedures set forth in the Settlement Agreement between Guccione Collection, LLC, FriendFinder Networks, Inc., and General Media Communications, Inc., dated March 31, 2014.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or part, by the applicable statutes of limitation.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or part, because they failed to mitigate their damages, if any.

1 **WHEREFORE**, the Second Amended Complaint should be dismissed in its
2 entirety, together with such other and further relief as this Court may deem just and
3 proper.

4
5 Dated: January 16, 2018

6 **SYVERSON, LESOWITZ &**
7 **GEBELIN LLP**

8 By: /s/ Steven T. Gebelin

9 Steven T. Gebelin
10 Erik S. Syverson

11 **COHEN TAUBER SPIEVACK &**
12 **WAGNER P.C.**

13 Kenneth J. Rubinstein (admitted *pro hac vice*)
14 Jackson S. Davis (admitted *pro hac vice*)

15 *Attorneys for Defendants*
16
17
18
19
20
21
22
23
24
25
26
27
28